

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES**

WASHINGTON, D.C. 2054

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FILE: B-211884**DATE:** September 26, 1983**MATTER OF:** Radix II, Incorporated**DIGEST:**

Solicitation requirement that an energy monitoring and control system and a temperature control system be furnished by a company regularly engaged in the manufacture of both systems is not unduly restrictive of competition where agency, because of performance failures in the past, seeks to assure the compatibility of both systems. Fact that few offerors can meet the Government's needs does not warrant conclusion that provision is unduly restrictive.

Radix II, Incorporated protests provisions contained in invitation for bids (IFB) No. 131-0003-83-6, issued by the Department of Health and Human Services (HHS), Office of Regional Operations for Facilities Engineering and Construction, Philadelphia, Pennsylvania for the construction of an animal testing laboratory facility to be used by the Food and Drug Administration (FDA). We deny the protest in part and dismiss it in part.

Radix, a potential subcontractor, contends that the solicitation requirement that the temperature control system and the energy monitor and control system be supplied by a single source is arbitrary and capricious and effectively limits the competition for this portion of the project to five large firms having both the technology and the capability to manufacture both systems. This, the protester contends, precludes dozens of other companies, including it, from bidding or having their products bid by the installer. Radix further complains that by combining such specialties when they can better be acquired separately, the agency has limited the competitive field to companies which manufacture both systems but which are not necessarily the best in either field.

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The agency explains that the energy monitor system monitors the temperature, humidity and air flow signals from the temperature control system and sends signals to the temperature control system to operate and control devices needed to heat and cool the building. HHS states that the requirement that these systems be supplied by a single source flows from unsatisfactory performance from past systems where the temperature control and the energy monitor systems were supplied by different manufacturers. It maintains that, based on its past experience, it must specify a single source of supply for the two systems in order to assure proper coordination and compatibility. According to HHS, the programs and experiments involved require uninterrupted and closely controlled environmental conditions throughout the facility and a failure of either system could adversely affect the experiments at considerable cost to the Government.

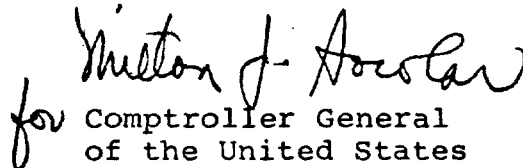
The determination of the needs of the Government, the methods for accommodating such needs, and the responsibility for drafting proper specifications which reflect those needs are primarily the responsibility of the contracting agency. Radix II, Incorporated, B-209476, March 1, 1983, 83-1 CPD 213. Further, it is proper for a contracting agency to determine its needs based on its actual experience. See Bowers Reporting Company B-185712, August 10, 1976, 76-2 CPD 144. Though specifications should be drawn so as to maximize competition, we will not interpose our judgment for that of the contracting agency unless the protester shows by clear and convincing evidence that the agency's judgment is in error and that a contract awarded on the basis of such specifications would, by unduly restricting competition, be a violation of law. Joe R. Stafford, B-184822, November 18, 1975, 75-2 CPD 324. In this regard, we have recognized that any specification imposed in a solicitation, by its very nature, will restrict competition to some extent. Kleen-Rite Corporation, B-183505, July 7, 1975, 75-2 CPD 18.

Radix has not shown that the agency's requirement that both systems be supplied by the same source is unduly restrictive or in excess of the agency's actual needs. In this regard, Radix does not dispute the agency's historical experience but asserts that the logic behind the agency's position unnecessarily reduces competition. We see nothing improper with the agency's requirement here, which is a rationally founded attempt to prevent further unsatisfactory performance of these systems. Further, the agency points out, that it received 16 bids from prime contractors for this project and the protester

itself notes that five potential subcontractors are capable of meeting the disputed requirements. In any event, even if only one firm can meet the specifications, the Government does not violate either the letter or spirit of competitive bidding statutes so long as the specifications are reasonable and necessary for the purpose intended. Johnson Controls, Inc., B-184416, January 2, 1976, 76-1 CPD 4.

Radix also raises several other objections to the specification. Since the protester first raised these contentions, well after the bid opening date, in its response to the agency's protest report, they are untimely and will not be considered. See 4 C.F.R. § 21.2(b)(1) (1983).

We deny the protest in part and dismiss it in part.


for Comptroller General
of the United States